(3)

No. 00-156

Supreme Court, U.S.
FILED
SEP - 7 2000
CLERK

IN THE

Supreme Court of the United States

PRODUCTION CREDIT ASSOCIATION OF EASTERN NEW MEXICO,

Petitioner,

v.

TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of New Mexico

---

REPLY TO BRIEF IN OPPOSITION

CURTIS W. SCHWARTZ
TIMOTHY R. VAN VALEN*
Post Office Box 2168
Bank of America Centre
Suite 1000
500 Fourth Street N.W.
Albuquerque, New Mexico 87103-2168
(505) 848-1800

Counsel for Production Credit Association of Eastern New Mexico

*Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

6PP

CORPORATE DISCLOSURE STATEMENT

Petitioner Production Credit Association of Eastern New Mexico has no parent corporation and no shareholders are publicly traded companies.

REPLY TO BRIEF IN OPPOSITION

Petitioner Production Credit Association of Eastern New Mexico ("PCA") submits this reply to make two simple points.

First, Respondent Taxation and Revenue Department of the State of New Mexico ("Department") asserts in its Brief in Opposition that PCA made a "misstatement of fact" by contending that if the decision of the New Mexico Court of Appeals stands, there will be retroactive tax liabilities for production credit associations. Br. in Opp. at 5. The Department adds that there is nothing in the record to support this statement, and that it is "highly speculative." *Id.* The Department's assertions are demonstrably incorrect.

In its Motion for Leave to File Brief as *Amicus Curiae* in the New Mexico Supreme Court, the Production Credit Association of New Mexico stated that for the years 1995-1998 it had not paid New Mexico corporate income tax because it was immune from such taxation for the reasons relied upon by PCA below and in this Court. Motion at 2-3. The motion further stated that the *amicus* was concerned that the Department would pursue it for such taxes, penalty and interest if PCA did not prevail. *Id.* at 2. That concern was justified. On May 11, 2000, a mere eleven days after the New Mexico Supreme Court denied PCA's Motion for Rehearing, the Department sent the Production Credit Association of New Mexico a letter instituting an audit for New Mexico corporate income taxes for the years 1994-1998. *See* Appendix. Contrary to the Department's assertions, therefore, it was neither a "misstatement of fact" nor "highly speculative" for PCA to suggest that the decision below, if

allowed to stand, would subject other production credit associations to substantial retroactive tax liabilities.

Second, as the Brief in Opposition makes clear, Respondent agrees with PCA that the Court should hold the petition pending the final decision in *Director of Revenue v. CoBank, ACB*, No. 99-1972, and should then act on the petition in a manner consistent with that decision. Accordingly, while PCA believes that the Department's substantive legal arguments are seriously flawed, there is no need to respond to those arguments because the Department agrees that the petition should be held in any event.

CURTIS W. SCHWARTZ
TIMOTHY R. VAN VALEN*
Post Office Box 2168
Bank of America Centre
Suite 1000
500 Fourth Street N.W.
Albuquerque, New Mexico 87103-2168
(505) 848-1800

Counsel for Production Credit Association of Eastern New Mexico

*Counsel of Record